

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF DYLAN S.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF DYLAN S., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

KEITH S., APPELLANT.

Filed April 27, 2010. No. A-09-710.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge.  
Affirmed.

Jennifer L. Konop, of Law Offices of Jennifer L. Konop, P.C., L.L.O., for appellant.

Donald W. Kleine, Douglas County Attorney, Amy Schuchman, and Alyson Carstens,  
Senior Certified Law Student, for appellee.

Lynnette Z. Boyle, of Tietjen, Simon & Boyle, guardian ad litem.

IRWIN, CARLSON, and MOORE, Judges.

IRWIN, Judge.

**I. INTRODUCTION**

Keith S. appeals an order of the juvenile court adjudicating Keith's son, Dylan S., to be a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). On appeal, Keith challenges the sufficiency of the evidence adduced at the adjudication hearing. We find the evidence sufficient to support the adjudication order, and we affirm.

**II. BACKGROUND**

Dylan was born in May 2007. On August 6, 2008, the State filed a supplemental petition seeking adjudication of Dylan as a child within the meaning of § 43-247(3)(a). On November 5, the State filed an amended supplemental petition alleging that Dylan was a child within the

meaning of § 43-247(3)(a). The State asserted that Dylan lacked proper parental care through the fault or habits of Keith. The State specifically alleged that Keith had failed to provide safe, stable, and appropriate housing; did not have a legal source of income to provide support for Dylan; suffered from mental illnesses; and was inconsistent in taking prescription medications for his mental illnesses. The State alleged that Dylan was at risk for harm.

An adjudication hearing was held over the course of various dates in March and April 2009. The State adduced evidence that a “family partner” had been appointed to assist Keith with locating safe and stable housing, finding suitable employment, and working on parenting skills. Keith neglected to attend numerous scheduled appointments with the family partner, had difficulty focusing on the conversation and was very drowsy during appointments, and indicated to the family partner that his lethargic state was due to the effects of prescription medications he was taking for psychiatric conditions and insomnia.

The State adduced evidence that between August and November 2008, Keith lived in four different residences, two of which had been visited by the family partner. According to the family partner, the first of Keith’s residences he visited was an unclean environment with items on the floor, piles of clothing on the floor, and dirty dishes piled in the sink. There was no evidence that Keith owned a crib, car seat, food, clothing, or toys appropriate for Dylan (who was then 15 to 18 months of age). The family partner testified that the first residence he visited presented a safety concern if Dylan were to reside there. Similarly, the family partner testified that a visit to a second residence revealed no evidence of a crib, car seat, food, clothing, or toys appropriate for a young child.

The State adduced evidence that Keith has been treated for bipolar affective disorder, attention deficit hyperactivity disorder, anxiety disorder, and remote history of methamphetamine dependence. The State adduced evidence that Keith has been prescribed lithium, estazolam, Valium, Adderall, and Abilify to treat his various mental health issues. The State adduced evidence that Keith’s treatment plan after August 2008 had involved changing one of his medications from Abilify to Invega because of changes in his behavior, including distractibility, irritability, grandiosity, problems with thought content, flight of ideas, decreased need for sleep, and impulsiveness.

The State adduced evidence from a visitation specialist involved with Keith’s visitation with Dylan. The visitation specialist testified that Keith did not attend visitations consistently and once canceled a visitation without prior notice. The visitation specialist testified that in October 2008, she filled out an incident report concerning one of Keith’s visitations. She testified that Keith kept nodding off and falling asleep for extended periods of time during the visitation, including falling asleep while holding Dylan on a park bench. When the visitation specialist asked Keith if he was “okay,” he did not seem to comprehend why she would ask such a question. Keith similarly fell asleep while holding Dylan during his next visitation with Dylan.

On June 23, 2009, the court entered an adjudication order. The court found the State had demonstrated by a preponderance of the evidence that Keith had failed to provide Dylan with safe, stable, and appropriate housing and that Keith suffered from a mental health illness which required him to take prescription medications. The court found that it was in Dylan’s best interests to remain in the temporary custody of the Nebraska Department of Health and Human Services. This appeal followed.

### III. ASSIGNMENTS OF ERROR

Keith assigns as error that the court erred in finding sufficient evidence that his unstable housing placed Dylan at risk of harm and in finding that his mental health diagnosis placed Dylan at risk of harm.

### IV. ANALYSIS

Keith challenges the sufficiency of the evidence adduced at the adjudication hearing to establish that it was appropriate for the juvenile court to assert jurisdiction over Dylan. We find the evidence was sufficient and reject Keith's assertions on appeal.

Section 43-247(3)(a) provides that a juvenile court may assert jurisdiction over any juvenile who, among other things, lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; or who is in a situation dangerous to the life or limb or injurious to the health or morals of such juvenile. As Keith recognizes, the court's concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of § 43-247. See *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008). If evidence of the faults or habits of a parent or custodian indicates a risk of harm to a child, the juvenile court may properly take jurisdiction of that child, even though the child has not yet been harmed or abused. *In re Interest of M.B. and A.B.*, 239 Neb. 1028, 480 N.W.2d 160 (1992).

The record indicates that Keith had asked for placement of Dylan in his home. There is no dispute that Keith resided in four different residences between August and November 2008, the 3 months between when the supplemental petition and the amended supplemental petition were filed. The family partner presented testimony that the condition of at least two of these residences, the only two observed by the family partner, was not a stable and appropriate housing situation for 18-month-old Dylan. Not only were the residences unclean, but they lacked necessary furniture, car seats, food, and toys for an 18-month-old child. There was evidence that Keith was evicted from one of the residences because it was "uninhabitable."

In addition to the lack of consistent and stable housing, the record indicates that Keith suffers from a number of mental health disorders for which he has been prescribed a variety of medications. There was also evidence presented that some of the medications have as side effects drowsiness, difficulty focusing, inattentiveness, lapses in concentration, and lethargy and that Keith had difficulty remaining awake and coherent during visitations with Dylan.

The record as a whole supports the juvenile court's conclusion that Keith had failed to provide appropriate, safe, and stable housing for Dylan. The transitory nature of Keith's residences, combined with his mental health conditions and prescription medications and their effects on his ability to be alert and attentive, presented a situation potentially injurious to Dylan. There is no merit to Keith's assignments of error.

## V. CONCLUSION

We find no merit to Keith's assertions of error on appeal. We affirm the adjudication order.

AFFIRMED.